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7 UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA
9

10 CATHOLIC SOCIAL SERVICES,
11 INC., - IMMIGRATION PROGRAM,
12 et al.,

NO. CIV.S-86-1343 LKK/JFM

13 Plaintiffs,

14 v.

O R D E R

15 JANET NAPOLITANO, SECRETARY
16 U.S. DEPARTMENT OF HOMELAND
17 SECURITY, et al.,

18 Defendants.
19 _____/

20 This class action addressed the Immigration and Naturalization
21 Service's improper decision to turn away certain applicants for
22 legalization during a one-year period from 1987 to 1988. The court
23 approved the parties' settlement agreement in January 2004. On
24 December 14, 2009, the court issued an order that, inter alia,
25 granted plaintiffs' motion to enforce the settlement agreement
26 because the defendants had relied upon a 1991 abandonment
regulation to deny the legalization applications of some class
members, in violation of the settlement.

1 Now before the court is plaintiffs' motion for attorney's fees
2 and costs pursuant to the Equal Access to Justice Act, 28 U.S.C.
3 § 2412(d), for the fees and costs incurred in prosecuting their
4 motion to enforce and their work related to post-judgment
5 monitoring and enforcement of the settlement agreement.

6 I. BACKGROUND

7 A. Initial Class Action Complaint

8 On November 12, 1986, plaintiffs filed a class action
9 complaint challenging an Immigration and Naturalization Service
10 ("INS")¹ regulation implementing a provision of the Immigration
11 Reform and Control Act of 1986 ("IRCA"), Pub. L. 99-603, 100 Stat.
12 3359, codified at 8 U.S.C. §§ 1255a et seq. (1986), which allowed
13 immigrants who had been in the United States unlawfully since
14 January 1, 1982 to apply for adjustment of status during a
15 specified twelve-month period. See 8 U.S.C. § 1255a(a)(2)(A).
16 IRCA directed the Attorney General to grant a stay of deportation
17 and to issue interim work authorization to immigrants who could
18 establish a prima facie case of eligibility in his or her
19 application for adjustment of status under IRCA. See 8 U.S.C. §
20 1255a(e)(2).

21 While IRCA required immigrants to be able to show that they
22 had been continuously physically present in the United States since
23 November 6, 1986, see 8 U.S.C. § 1255a(3)(A), the statute also
24 stated that "[a]n alien shall not be considered to have failed to

25
26 ¹ The INS was the predecessor to the U.S. Citizenship and
Immigration Service ("CIS"), among other agencies.

1 maintain continuous physical presence in the United States . . .
2 by virtue of brief, casual and innocent absences." 8 U.S.C. §
3 1255a(3)(B). The INS subsequently issued a regulation that
4 provided that:

5 Brief, casual, and innocent means a departure
6 authorized by the Service (advance parole)
7 subsequent to May 1, 1987 of not more than
8 thirty days for legitimate emergency or
9 humanitarian purposes unless a further period
 of authorized departure has been granted in
 the discretion of the district director or a
 departure was beyond the alien's control.

10 8 C.F.R. § 245a.1(g) (emphasis in original).

11 In 1988, this court held that IRCA's "continuous physical
12 presence" requirement was met for those applicants who had "brief,
13 casual, and innocent" absences from the country without prior INS
14 approval and, thus, the INS's regulation interpreting the statute
15 was invalid. See Catholic Soc. Serv., Inc. v. Meese, 685 F.Supp.
16 1149 (E.D. Cal. 1988). The government did not appeal the ruling
17 on the merits. The government did, however, appeal this court's
18 subsequent remedial orders that, inter alia, extended the
19 application period for the plaintiff class; mandated procedures for
20 determining whether an immigrant was covered by the injunction; and
21 provided that plaintiffs who could show prima facie eligibility for
22 legalization were entitled to stays of deportation, release from
23 custody, and temporary employment authorization. See, e.g.,
24 Catholic Soc. Serv., Inc. v. Thornburgh, 956 F.2d 914 (9th Cir.
25 1992); Reno v. Catholic Soc. Serv., Inc., 509 U.S. 43 (1993);
26 Catholic Soc. Serv., Inc. v. Reno, 134 F.3d 921 (9th Cir. 1997);

1 Catholic Soc. Serv., Inc. v. I.N.S., 182 F.3d 1053 (9th Cir. 1999).

2 **B. Settlement of Class Action**

3 The parties entered a settlement that was approved on January
4 23, 2004. Order Approving Settlement Class Action, ECF No. 656
5 (Jan. 23, 2004).²

6 The settlement set forth a process for determining whether an
7 individual was a member of the plaintiff class, under which the
8 individual was required to submit an application for class

9 _____
10 ² The settlement defined the plaintiff class entitled to
11 relief as:

12 A. All persons who were otherwise prima facie
13 eligible for legalization under section 245A
14 of the INA and who tendered completed
15 applications for legalization under section
16 245A of the INA and fees to an INS officer or
17 agent acting on behalf of the INS, including
a QDE, during the period from May 5, 1987 to
May 4, 1988, and whose applications were
rejected for filing because an INS officer or
QDE concluded that they had traveled outside
the United States after November 6, 1986
without advance parole.

18 B. All persons who filed for class membership
19 under Catholic Soc. Serv., Inc. v. Reno, No.
20 Civ. S-86-1343 LKK (E.D. Cal.), and who were
21 otherwise prima facie eligible for
22 legalization under Section 245A of the INA,
23 who, because an INS officer or QDE concluded
24 that they had traveled outside the United
25 States after November 6, 1986 without advance
26 parole were informed that they were ineligible
for legalization, or were refused by the INS
or its QDEs legalization forms, and for whom
such information, or inability to obtain the
required application forms, was a substantial
cause of their failure to timely file or
complete a written application.

Joint Mot., Doc. 650, Att. 1 (Dec. 1, 2003).

1 membership and an application for status as a temporary resident,
2 with supporting documentation, to the defendants within a one-year
3 period. Joint Mot., Doc. 650, Att. 1, at ¶ 4 (Dec. 1, 2003). The
4 defendants were required to grant class membership applications
5 where "it appear[ed] more probable than not that the applicant
6 [met] the class definition." Id. at ¶ 6.

7 Before denying the application, the defendants were to forward
8 to the applicant or his or her representative "a notice of intended
9 denial explaining the perceived deficiency in" the application for
10 class membership, after which, the applicant had thirty days to
11 submit additional evidence or otherwise remedy the deficiency. Id.
12 at ¶ 7. If, following the above protocol, the application was
13 denied, the defendants were required to send a copy of the notice
14 of denial to the applicant, his or her attorney, and class counsel
15 and inform the applicant of his or her right to appeal the denial
16 to a special master. Id. at ¶ 8.

17 If, however, the application was granted, the defendants were
18 required to adjudicate the class member's application for temporary
19 residence as if it were timely filed between May 5, 1987 and May
20 4, 1988. Id. at ¶ 11. The settlement agreement provided:

21
22 The Defendants shall adjudicate each
23 application for temporary residence filed on
24 Form I-687 in accordance with the provisions
25 of section 245A of the Immigration and
26 Nationality Act, 8 U.S.C. § 1255a,
regulations, and administrative and judicial
precedents the INS followed in adjudicating I-
687 applications timely filed during the IRCA
application period.

1 Id.

2 **C. Initial Settlement for Attorney's Fees and Costs**

3 In March 2004, the parties agreed to settle plaintiffs' claims
4 for attorney's fees and costs incurred in the action. Stipulation,
5 ECF No. 659 (March 5, 2004). This court's order thereon stated,
6 inter alia, "Defendants will pay Plaintiffs \$3,500,000 in full
7 settlement of all claims they may have for attorneys' fees, whether
8 under the Equal Access to Justice Act ("EAJA"), or otherwise, and
9 \$100,000 in full settlement of all claims they may have for costs."
10 Id. at 3. The order also provided, "such payment will release
11 Defendants from all payment obligations to Plaintiffs under EAJA
12 and any other applicable law or regulation." Id.

13 **D. Motion to Enforce the Class Action Settlement Agreement**

14 In October 2009, plaintiffs filed a motion to enforce the
15 settlement, arguing that: (1) defendants had been applying an
16 abandonment regulation that was enacted in 1991 to terminate class
17 members' applications for temporary residence when applicants had
18 failed to provide supplemental evidence after the government had
19 requested they do so; and (2) defendants had declined to consider
20 applications for class membership by applicants residing abroad and
21 had failed to notify those applicants of their right to appeal a
22 decision denying their applications for class membership to a
23 special master. Pls' Mot., ECF No. 671 (Oct. 12, 2009).

24 In their opposition to plaintiff's first argument, defendants
25 argued, inter alia, that: (1) the settlement agreement was silent
26 as to how CIS should treat abandoned applications for class

1 membership or subsequent applications for legalization and it was
2 therefore not unreasonable for current CIS officers to look to the
3 current abandonment regulation in determining how to adjudicate
4 those applications; (2) the abandonment regulations were
5 promulgated, in part, because "some applicants for immigration
6 benefits would file skeletal or unapprovable benefit applications
7 simply to gain interim benefits, or to establish a priority place
8 in line," "there was rampant fraud by people who prepared class
9 membership applications," and "many fraudulent applications would
10 later be abandoned"; and (3) the abandonment regulation "provide[d]
11 the skeletal applicant more protection, and more procedural due
12 process, than was available to a legalization applicant in the
13 1980's, not less." See Defs.' Opp'n, ECF No. 674, at 2-18 (Nov.
14 16, 2009).

15 As to the plaintiff's first argument, this court determined
16 that defendants had "refus[ed] to implement the relief set forth
17 in the settlement agreement" by engaging in a "pattern and practice
18 of applying the 1991 abandonment . . . regulations to the
19 legalization applications of plaintiffs," even though the
20 settlement had "expressly require[d] that defendants may only use
21 regulations in effect while applications filed during the 1987-1988
22 application period were adjudicated when adjudicating class member
23 applications." Order, ECF No. 678, at 7, 9 (Dec. 14, 2009). This
24 court went on to state that it could not "envision any reasonable
25 interpretation of paragraph 11 [of the settlement agreement] that
26 would allow defendants to apply a regulation not in effect during

1 the 1987-1988 period." Id. at 9.

2 With regard to the plaintiff's second argument, this court
3 found that plaintiffs had "not identified any claims ripe for
4 judicial review" and, thus, the court could not decide "whether
5 applications of individuals living abroad should be adjudicated by
6 USCIS." Id. at 13. However, the court determined that plaintiffs
7 had "identified a pattern and practice of failure to comply with
8 the terms of the settlement" because they had "provided two notices
9 of decision from USCIS declining to consider applications for class
10 membership of individuals residing abroad" and "[n]either notice
11 [had] notifie[d] the applicant of his or her right to seek review
12 of the denial by a special master," in violation of the settlement
13 agreement. Id. Recognizing their failure to conform with the
14 terms of the settlement agreement, during oral argument on the
15 motion to enforce, defendants' counsel informed the court that
16 defendants had identified all individuals who had applied for class
17 membership from abroad and that defendants were in the process of
18 advising these applicants of their right to appeal to the special
19 master. See id.; Tr. Proceedings, ECF No. 679, at 20 (Dec. 15,
20 2009).

21 In May 2010, after a series of negotiations, this court
22 resolved the parties' conflicting proposals for remedial plans
23 concerning the applications deemed abandoned and those from abroad,
24 and provided that: (1) class members would have ninety days from
25 the date notice was mailed of the amended notice of denial to
26 appeal to the administrative appeals office; (2) the agency, where

1 possible, would refund the required fee for unnecessary motions to
2 reopen by virtue of declared abandonment, or credit such fees
3 towards the fee for filing an administrative appeal at the class
4 members' option; (3) review of the appeals would be on the merits;
5 and (4) the CIS would accept a filing fee as it existed in 2004-
6 2005. Order, ECF No. 696 (May 18, 2010).³

7 **E. Motion for Attorney's Fees**

8 Before the court is Plaintiffs' motion for attorney's fees and
9 costs pursuant to the Equal Access to Justice Act, 28 U.S.C. §
10 2412(d), for the fees and costs incurred in prosecuting their
11 motion to enforce and for their work related to the post-judgment
12 enforcement of the settlement agreement. Pls' Mot., ECF No. 681
13 (Jan. 13, 2010).

14 Although plaintiffs, in their motion for attorney's fees,
15 assert that they are "entitled to recover attorney's fees and costs
16 for all post-settlement monitoring and not only work directly

17 ³ In the order resolving the parties' conflicting proposals
18 for remedial plans, this court stated:

19 Two conflicting values are at stake. On the
20 one hand, is the imperative of due process
21 which strongly suggests that applicants not be
22 deprived of the opportunity to apply for the
23 benefits acquired in the settlement agreement
24 in the instant case by virtue of the
25 government's conduct, which the court
26 previously determined was inconsistent with
the decree. On the other hand, in the real
world in which cases must, at some point, end
and allow the government and the people to get
on to other matters. The court must be frank,
in some ways there simply is no "right"
answer.

Order, ECF No. 696, at 1-2.

1 associated with the motion to enforce," id. at 2 n.3, in their
2 reply to the defendant's opposition, plaintiffs acknowledge that,
3 "Although plaintiffs could have sought fees for general monitoring
4 of the settlement . . . they seek fees only for work specifically
5 related to enforcing the settlement." Pls' Reply, ECF No. 705, at
6 1 n.1. This court therefore interprets plaintiffs' motion as a
7 request for fees and costs confined to plaintiffs' work
8 specifically related to enforcing the settlement.

9 Plaintiffs have calculated their fees under the EAJA by
10 multiplying their assessment of the inflation-adjusted EAJA hourly
11 rate by the hours they spent both prosecuting the motion to enforce
12 CIS's compliance with the settlement and preparing the instant EAJA
13 motion (but deducting hours that were poorly documented, excessive,
14 the result of overstaffing, or not directly related to prosecution
15 of the enforcement motion), yielding an initial request by the
16 plaintiffs for \$51,187.93 under the statute. Decl. Counsel, ECF
17 No. 713, at Ex. B. Plaintiffs also seek an enhanced fee award,
18 calculated at \$500 per hour, based on their particular "distinctive
19 knowledge and specialized skill," yielding an enhanced request for
20 \$143,625. Consolidated Index, ECF No. 707, at Ex. P.
21 Additionally, plaintiffs seek the award of costs for "fees and
22 other expenses" under the EAJA, in accordance with plaintiffs' bill
23 of costs, in the amount of \$2,033.27. Id. at Ex. O.

24 II. STANDARD FOR MOTION FOR ATTORNEY'S FEES AND COSTS

25 Under the Equal Access to Justice Act ("EAJA"), a court "shall
26 award" attorney fees, costs and other expenses to a "prevailing

1 party" in "any civil action (other than cases sounding in tort),
2 including proceedings for judicial review of agency action, brought
3 by or against the United States in any court having jurisdiction
4 of that action, unless the court finds that the position of the
5 United States was substantially justified or that special
6 circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A)
7 (2011).

8 Because the EAJA partially waives the sovereign immunity of
9 the United States and created a limited, precisely-defined class
10 of adjudications in which an award of attorney's fees is allowed,
11 the EAJA's waiver must be strictly construed. W. Watersheds
12 Project v. Interior Bd. of Land Appeals, 624 F.3d 983, 989 (9th
13 Cir. 2010).

14 For the court to award attorney's fees and costs under the
15 EAJA, it must be shown that (1) the party seeking fees is the
16 prevailing party; (2) the government has not met its burden of
17 showing that its positions were substantially justified or that
18 special circumstances make an award unjust; and (3) the requested
19 fees and costs are reasonable. United States v. Milner, 583 F.3d
20 1174, 1196 (9th Cir. 2009) (citing Perez-Arellano v. Smith, 279
21 F.3d 791, 793 (9th Cir. 2002)).

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III. ANALYSIS

A. Prevailing Party

1. Availability of EAJA Fee Awards for Monitoring and Enforcement of a Settlement Agreement

As a preliminary matter, defendants argue that plaintiffs are not eligible for attorney's fees and costs because "Plaintiffs' class counsel already received fees for the earlier phases of this litigation [and they] are not entitled to a double dip of fees under the EAJA." Defs' Opp'n, ECF No. 703, at 2 (Aug. 15, 2011).

It is firmly within the district court's discretion to determine whether a party's attorney's fees for post-judgment proceedings should be compensable under the EAJA. See Bullfrog Films, Inc. v. Wick, 959 F.2d 782, 786 (9th Cir. 1992).

In Pennsylvania v. Delaware Valley Citizens' Council, 478 U.S. 546, 106 S.Ct 3088, 92 L.Ed.2d 439 (1986), the plaintiff first obtained relief in the form of a consent decree and later participated in administrative proceedings and substantial further litigation to protect that relief. The Supreme Court held that "participation in these administrative proceedings was crucial to the vindication of Delaware Valley's rights under the consent decree and [found] that compensation for these activities was entirely proper and well within the 'zone of discretion' afforded the District Court." Delaware Valley, 478 U.S. at 561, 106 S.Ct. at 3096 (internal citation omitted).

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1 Similarly, in Keith v. Volpe, 833 F.2d 850 (9th Cir. 1987),
2 the plaintiff applied for supplemental fees for monitoring
3 compliance with a consent decree, even though the parties had
4 previously stipulated to a fee award for the plaintiff's counsel's
5 work leading up to, and implementing, the consent decree. The
6 Ninth Circuit held that "the district court here 'was entitled to
7 believe that relief [for the plaintiffs under the consent decree]
8 would occur more speedily and reliably' if the [plaintiffs] engaged
9 in these monitoring activities, and this post-judgment monitoring
10 by the [plaintiffs] was, therefore, 'a necessary aspect of
11 plaintiffs' 'prevailing' in the case.'" Keith, 833 F.2d at 857,
12 quoting Garritty v. Sununu, 752 F.2d 727, 738-39 (1st Cir. 1984).⁴

13 In this case, under the terms of the settlement agreement, the
14 defendants were prescribed a set of conditions and procedures for
15 CIS's future acceptance, evaluation, and denial of claims for class
16 membership. The fact that defendants were required to engage in
17 ongoing future activities to comply with the settlement agreement,
18 by necessity, meant that both the parties and this court
19 contemplated further activity by the plaintiffs in monitoring the
20 defendants' activities, to some extent, to ensure that the
21 defendants were acting in compliance with the settlement terms.⁵

22 ⁴ Although Delaware Valley and Keith both addressed whether
23 or not attorney fee awards were available for post-judgment
24 proceedings under the Civil Rights Attorney's Fees Awards Act of
25 1976 ("CRAFA"), the Ninth Circuit has stated that it "cannot
distinguish [CRAFA] from the [EAJA] for the purposes of defining
'prevailing party,'" Bullfrog Films, 959 F.2d at 786 n.5 (citing
United States v. Buel, 765 F.2d 766, 767 (9th Cir. 1985)).

26 ⁵ If the defendants had, in actuality, complied with the
explicit terms of the settlement agreement, the plaintiffs may have

1 The defendants failed to abide by the letter of the settlement
2 agreement when they impermissibly applied their 1991 abandonment
3 regulations in the adjudication of class members' claims and
4 declined to consider applications for class membership of
5 individuals residing abroad and failed to notify those applicants
6 of their right to appeal, which required the plaintiffs to take
7 active and affirmative steps to enforce the settlement agreement.
8 The defendants' failure to adhere to the terms of the settlement
9 requirements continued until the resolution of the plaintiffs'
10 motion to enforce.

11 It is therefore clear that the plaintiffs' litigation of their
12 motion to enforce was "crucial to the vindication of [their]
13 rights" under the settlement agreement, see 478 U.S. at 561, 106
14 S.Ct. at 3096, and their affirmative enforcement activities were
15 a "necessary aspect" of their prevailing in the case, see 833 F.2d
16 at 857.

17 _____ been precluded from receiving post-settlement fees for general
18 monitoring of the settlement agreement by the terms of this court's
19 March 2004 order, which stated that the plaintiffs' agreed-upon fee
20 at that time was "in full settlement of all claims they may have
21 for attorneys' fees, whether under the Equal Access to Justice Act
22 ("EAJA"), or otherwise." See Alliance to End Repression v. City
23 of Chicago, 356 F.3d 767, 770-71 (7th Cir. 2004) (noting that
24 Keith, among other cases, is "best explained on a deterrence
25 rationale: careful monitoring reduces the likelihood that the
26 decree will be violated," but that, following the Supreme Court's
ruling in Buckhannon Board & Care Home, Inc. v. West Virginia Dep't
of Health & Human Resources, 532 U.S. 598, 121 S.Ct. 1835, 149
L.Ed.2d 855 (2001), "[m]onitoring may reduce the incidence of
violations of a decree, but if it does not produce a judgment or
order, then . . . it is not compensable.") However, because the
defendants did not comply with the explicit terms of the
settlement, and the plaintiffs are not seeking fees for general
monitoring of the settlement agreement, Buckhannon's limitation
does not apply to this case.

1 The plaintiffs are therefore not precluded from recovering
2 attorney's fees and costs for work performed subsequent to the
3 settlement agreement. Plaintiffs are still required to show,
4 however, that they have met the requirements for a fee award under
5 the EAJA.

6 **2. Prevailing Party**

7 A plaintiff is a "prevailing party" for purposes of the EAJA
8 if he or she "succeed[s] on any significant issue in litigation
9 which achieves some of the benefit the parties sought in bringing
10 suit." See United States v. Real Property Known as 22249 Dolorosa
11 Street, 190 F.3d 977, 981 (9th Cir. 1999) (internal citations and
12 quotation marks omitted). The plaintiff's success must not solely
13 derive from the defendant's voluntary cessation of its conduct.
14 Buckhannon Board and Care Home, Inc. v. West Virginia Dep't of
15 Health, 532 U.S. 598, 121 S.Ct 1835, 149 L.Ed.2d 855 (2001).
16 Instead, there must be a "judicial imprimatur" that changes the
17 legal relationship of the parties. Watson v. County of Riverside,
18 300 F.3d 1092, 1096 (9th Cir. 2002).

19 The Supreme Court has provided two examples of forms of relief
20 that justify a fee award: enforceable judgments on the merits and
21 settlement agreements enforced through a consent decree.
22 Buckhannon, 532 U.S. at 604-05. The Ninth Circuit has also found
23 a legally enforceable settlement agreement between the plaintiff
24 and defendant to qualify the plaintiff as a prevailing party. See
25 Richard S. v. Dep't of Developmental Services of Cal., 317 F.3d
26 1080, 1086 (9th Cir. 2003).

1 In the class action at hand, when this court approved the
2 parties' settlement agreement in January 2004, the plaintiffs were
3 a "prevailing party" for EAJA purposes because the legally
4 enforceable settlement agreement required the defendants to revisit
5 applications for legalization that had previously been discouraged,
6 refused, or denied. The plaintiffs, by both invalidating the INS's
7 interpretation of "brief, casual and innocent absences" under IRCA,
8 and requiring the agency to re-evaluate individual claims,
9 therefore succeeded on a significant issue in litigation which
10 achieved the benefit they sought in bringing suit. Because the
11 defendants were required by the court-approved settlement to take
12 remedial steps that they would not have otherwise taken, there was
13 a "judicial imprimatur" that changed the legal relationship and
14 obligations of the parties and the plaintiffs' success in the suit
15 did not derive from the defendants' voluntary cessation of the
16 conduct. Indeed, both parties likely recognized the plaintiffs'
17 status as a prevailing party, and the plaintiffs' potential
18 eligibility for fee awards under the EAJA when they stipulated, in
19 March 2004, to a settlement of the plaintiffs' claims under the
20 EAJA.

21 Because plaintiffs were a "prevailing party" as of the
22 settlement agreement, and their post-settlement enforcement
23 activities were a "necessary aspect" of their prevailing in the
24 case, see Keith, 833 F.2d at 857, this court need not consider
25 whether plaintiffs were a "prevailing party" in their motion to
26 enforce. See Gates v. Gomez, 60 F.3d 525, 534 (9th Cir. 1995)

1 (defendants "urge us to apply a prevailing party standard under 42
2 U.S.C. § 1988 to post-judgment monitoring and compliance work under
3 the consent decree. But plaintiffs have already met the section
4 1988 prevailing party standard with the entry of the consent
5 decree."). Regardless, defendants have stated that they "do not
6 contend that Plaintiffs did not prevail upon their Motion to
7 Enforce." Defs' Opp'n, ECF No. 703, at 6.

8 This court therefore finds that plaintiffs have satisfied the
9 "prevailing party" requirement of the EAJA.

10 **3. Net Worth Requirements**

11 An eligible "party" for a fee award under the Equal Access to
12 Justice Act ("EAJA"), must be, inter alia, an individual whose net
13 worth did not exceed \$2,000,000 at the time the civil action was
14 filed. 28 U.S.C. § 2412(d)(1)(D)(2)(B)(i).

15 Plaintiffs have submitted evidence demonstrating that the
16 movant plaintiff class members are indigent and therefore fall
17 under the maximum net worth requirements under the EAJA. Pls'
18 Mot., ECF No. 681, at 11-12; Pls' Decl. Ruben Sandoval, Ex. A;
19 Decl. of Mohani Singh, Ex. B; Decl. Lucilda Knox, Ex. C.
20 Defendants do not contest the assertion that plaintiff class
21 members are indigent, nor do they contest the evidence submitted
22 thereon.

23 This court therefore finds that plaintiffs have met the net
24 worth requirements under the EAJA.

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1 **B. Substantial Justification for Defendants' Position**

2 Under the EAJA, the government bears the burden of showing
3 that its position was substantially justified in law and in fact.
4 Oregon Environmental Council v. Kunzman, 817 F.2d 484, 498 (9th
5 Cir. 1987). That is, "the government's position must have a
6 reasonable basis in law and fact." Shafer v. Astrue, 518 F.3d
7 1067, 1071 (9th Cir. 2008) (internal citations omitted). Put
8 another way, "substantially justified" means there is a dispute
9 over which reasonable minds could differ. Gonzales v. Free Speech
10 Coalition, 408 F.3d 613, 618 (9th Cir. 2005). For example, an
11 agency's position is not substantially justified when it is based
12 on violations of the Constitution, a federal statute, or the
13 agency's own regulations. Mendenhall v. National Transp. Safety
14 Bd., 92 F.3d 871, 874 (9th Cir. 1996).

15 There is conflicting guidance within the Ninth Circuit as to
16 whether a district court should evaluate the government's position
17 as a whole, or its position at each discrete stage of litigation
18 in question, when deciding if the government has met its burden of
19 showing that its position was substantially justified.

20 On the one hand, the Ninth Circuit has provided that in
21 determining fee eligibility under the EAJA, a court should treat
22 a case as an inclusive whole, rather than as atomized line-items.
23 In re Southern California Sunbelt Developers, Inc., 608 F.3d 456,
24 463 (9th Cir. 2010) (citing Commissioner, I.N.S. v. Jean, 496 U.S.
25 154, 161-62, 110 S.Ct. 2316, 2320 (1990)); see also Al-Harbi v.
26 I.N.S., 284 F.3d 1080, 1084 (9th Cir. 2002) ("In making a

1 determination of substantial justification, the court must consider
2 the reasonableness of both the underlying government action at
3 issue and the position asserted by the government in defending the
4 validity of the action in court." (internal quotation marks and
5 citations omitted)); Gutierrez v. Barnhart, 274 F.3d 1255, 1259
6 (9th Cir. 2001) ("The district court erred in not addressing the
7 reasonableness of the underlying [agency] conduct and basing its
8 denial of fees solely on the government's litigation position.").
9 Bolstering this interpretation of the "substantial justification"
10 requirement is the Supreme Court's holding that "[t]he single
11 finding that the Government's position lacks substantial
12 justification, like the determination that a claimant is a
13 'prevailing party,' thus operates as a one-time threshold for fee
14 eligibility," even "[w]hile the parties' postures on individual
15 matters" within any given civil action "may be more or less
16 justified." Commissioner, I.N.S., 496 U.S. at 160-61, 110 S.Ct.
17 at 2320.

18 Evaluating this class action as an inclusive whole, this court
19 finds that the government's position lacks substantial
20 justification.⁶ In this court's 1988 opinion invalidating the

21 ⁶Defendants make no arguments that their position in the case
22 as a whole was substantially justified. Instead, defendants
provide:

23 This Court should not look at Defendants' pre-
24 litigation position to determine substantial
25 justification for proceedings under the
26 Settlement Agreement. That dispute was
settled, and class counsel received fees for
the litigation leading to the Settlement
Agreement. . . . This Court should . . .

original INS regulation at issue, this court concluded that the INS's regulation "simply finds no support in the text of [IRCA]"; that "[a]ny possible reading of the Attorney General's final regulation leads to a result that is inconsistent with the Congressional purpose"; that, of two possible interpretations of the regulations, "[n]either . . . is consistent with the plain language of the statute"; that "the Attorney General's regulation is not only inconsistent with the department's previous understanding of the ["brief, casual, and innocent"] language, it in effect sought to limit the meaning of the phrase, a result which Congress had rejected"; and that "the INS has not interpreted the phrase consistently throughout the statutory scheme." Catholic Soc. Serv., Inc. v. Meese, 685 F.Supp. 1149, 1155-57 (1988). Because the INS's interpretation of "brief, casual, and innocent" was contrary to the text, intent, and plain language of a federal statute, in addition to being contrary to the agency's own previous understanding and alternative usage of the phrase, reasonable minds could not differ in their assessment that the government's underlying conduct in this case was not substantially justified.

evaluate whether defendants' opposition to Plaintiffs' Motion to Enforce was substantially justified.

Defs' Opp'n to Pls' Mot. for Att'y Fees, ECF No. 703, at 5. If this court is to treat the class action as an inclusive whole in determining whether the government's position was substantially justified, the defendants' failure to make arguments regarding their position prior to plaintiffs' motion to enforce indicates that defendants have failed to meet their burden of showing that the government's position throughout the class action as a whole has been substantially justified.

1 Thus, under this theory, defendant's conduct in the case as an
2 inclusive whole was not substantially justified. See Commissioner,
3 I.N.S., 496 U.S. at 160-61, 110 S.Ct. at 2320.

4 On the other hand, however, the Ninth Circuit has also noted
5 that after the Supreme Court's decision in Shalala v. Schaefer, 509
6 U.S. 292, 113 S.Ct. 2625, 125 L.Ed.2d 239 (1993), when it "became
7 possible for a claimant to be deemed a 'prevailing party' for EAJA
8 purposes prior to the ultimate disposition of his disability
9 claim," a "shift occurred within the circuit to considering the
10 justification of the government's position at the discrete stage
11 in question." Corbin v. Apfel, 149 F.3d 1051, 1053 (9th Cir.
12 1998). That is, after Shalala v. Schaefer, the Ninth Circuit began
13 requiring that the "government's position at each stage . . . be
14 'substantially justified.'" Id.; see also Shafer, 518 F.3d at 1071
15 (finding that where an ALJ's decision was reversed on the basis of
16 procedural errors, the relevant question was whether the
17 government's decision to defend on appeal the procedural errors
18 committed by the ALJ was substantially justified).

19 Evaluating whether defendants' position after the settlement
20 agreement and through the litigation of the plaintiffs' motion to
21 enforce was substantially justified, the court finds that the
22 defendants' position lacks substantial justification. After the
23 settlement agreement, this court found that defendants had engaged
24 in a "pattern and practice of applying their 1991 abandonment . .
25 . regulations to the legalization applications of plaintiffs," in
26 direct contravention of the explicit requirements of the settlement

1 agreement. See Order, ECF No. 678, at 7, 9 (Dec. 14, 2009).
2 Indeed, the court explained that it could not "envision any
3 reasonable interpretation of paragraph 11 [of the settlement
4 agreement] that would allow defendants to apply a regulation not
5 in effect during the 1987-1988 period." Id. at 9. Defendants had
6 also failed to comply with the terms of the settlement agreement
7 by "declining to consider applications for class membership of
8 individuals residing abroad" and by failing to notify the foreign
9 applicant of his or her right to appeal. Id. at 13. The court
10 continues to find the government's contravention of the express
11 terms of their agreed-upon settlement patently unreasonable, and
12 thus, defendants' conduct following the settlement agreement was
13 not substantially justified.^{7,8} Because it was unreasonable for

14 ⁷ Defendants argue that, because plaintiffs failed to assert
15 that the government's position as to foreign filers lacked
16 substantial justification, plaintiffs waive that argument in the
17 motion before the court. This argument fails. Under the EAJA, the
18 government bears the burden of showing that its position was
19 substantially justified. Oregon Environmental Council v. Kunzman,
20 817 F.2d 484, 498 (9th Cir. 1987).

21 ⁸To support their claim that defendants' post-settlement position
22 was substantially justified, defendants point to the language of
23 this court's May 2010 order resolving the parties' conflicting
24 proposals for remedial plans. Defs' Opp'n to Pls' Mot. for Att'y
25 Fees, ECF No. 703, at 7. In the order, this court noted that:

26 Two conflicting values are at stake. On the
one hand, is the imperative of due process
which strongly suggests that applicants not be
deprived of the opportunity to apply for the
benefits acquired in the settlement agreement
in the instant case by virtue of the
government's conduct, which the court
previously determined was inconsistent with
the decree. On the other hand, in the real
world in which cases must, at some point, end
and allow the government and the people to get
on to other matters. The court must be frank,

1 defendants to apply regulations and policies in contravention of
2 the terms of the settlement agreement, this court cannot find that
3 the position asserted by the government in defending the validity
4 of those post-settlement actions in court was reasonable. See
5 Flores v. Shalala, 49 F.3d 562, 570 n.11 (9th Cir. 1995) ("It is
6 difficult to imagine any circumstance in which the government's
7 decision to defend its actions in court would be substantially
8 justified, but the underlying administrative decision would not.").

9 Thus, the government has failed to meet its burden of showing
10 that its positions were substantially justified.

11 **C. Injustice of Awarding Fees**

12 A prevailing plaintiff should ordinarily recover attorneys'
13 fees unless special circumstances would render such an award
14 unjust. 28 U.S.C. § 2412(d)(1)(A). Defendants make no argument
15 that, due to special circumstances, an award of attorney's fees in
16 this case would be unjust.

17 This court, therefore, does not find that any special
18 circumstances exist that would make an EAJA award in this case
19 unjust.

20 **D. Calculation of a Reasonable Fee**

21 Although eligibility for fees is established upon meeting the
22 conditions set out by the EAJA, the district court has substantial

23 _____
in some ways there simply is no "right"
24 answer.

25 Order, ECF No. 696, at 1-2. However, in acknowledging the real-
26 world constraints faced by the government, this court was not
stating that it was reasonable for CIS to fail to comply with the
express terms of the settlement agreement.

1 discretion in fixing the amount of an EAJA award. Commissioner,
2 I.N.S., 496 U.S. at 163.

3 Under the EAJA, a district court's award of attorney fees must
4 be "reasonable" and the most useful starting point for determining
5 the amount of a reasonable fee is the number of hours reasonably
6 expended on the litigation multiplied by a reasonable hourly rate.
7 Hensley v. Eckerhart, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d
8 40 (1983); Sorenson v. Mink, 239 F.3d 1140, 1145 (9th Cir. 2001).

9 Attorney fees under the EAJA are capped by Congress. Until
10 March 29, 1996, the statute provided that "attorney fees shall not
11 be awarded in excess of \$75 per hour unless the court determines
12 that an increase in the cost of living or a special factor . . .
13 justifies a higher fee." 28 U.S.C. § 2412(d)(2)(A) (1994).
14 Although, on March 29, 1996, the statute was amended to increase
15 the maximum fee to \$125 per hour, plus any "cost of living" and
16 "special factor" adjustments, the \$125 per hour cap only applies
17 to cases commenced on or after March 29, 1996. Sorenson, 239 F.3d
18 at 1145 (citing Contract with America Advancement Act of 1996,
19 Pub.L. 104-121, 110 Stat. 847, 863, §§ 232(b)(1), 233 (1996)).

20 Because this class action commenced in November of 1986, the
21 applicable hourly fee under the EAJA is \$75 per hour. However, the
22 EAJA provides that the hourly rate should be increased where "an
23 increase in the cost of living . . . justifies a higher fee." 28
24 U.S.C. § 2412(d)(2)(A)(ii). The Ninth Circuit has provided that,
25 except in unusual circumstances, a cost of living increase should
26 be granted to adjust for inflation. See Animal Lovers Vol. Assn.

1 v. Carlucci, 867 F.2d 1224, 1227 (9th Cir. 1989). Defendants
 2 identify no such "unusual circumstances" that would make an
 3 inflation adjustment inappropriate in this case. This court will
 4 therefore calculate the plaintiffs' attorneys fees with the
 5 inflation adjustment.

6 Cost-of-living increases are calculated by multiplying the
 7 statutory maximum hourly rate by the annual average consumer price
 8 index figure for all urban consumers ("CPI-U") for the years in
 9 which the attorney's work was performed and dividing by the CPI-U
 10 figure for the effective date of the statutory maximum hourly rate
 11 (using the CPI-U rate from October 1981 for pre-amendment cases).
 12 Nadarajah v. Holder, 569 F.3d 906, 918 (9th Cir. 2009); Ramon-
 13 Sepulveda v. I.N.S., 863 F.2d 1458, 1463 (9th Cir. 1988).

14 According to the given formula, the court calculates the cost-
 15 of-living increase as follows: pre-1996 EAJA statutory maximum
 16 hourly rate (\$75/hour); multiplied by the CPI-U for the years in
 17 which the attorneys' work was performed, see United States Dep't
 18 of Labor, Bureau of Labor Statistics, Consumer Price Index,
 19 <http://www.bls.gov/cpi/tables.htm> (last visited Sept. 22, 2011);
 20 divided by the CPI-U rate from October 1981.⁹ Because the average
 21 annual CPI-U figure is not yet available for 2011, the attorney
 22 hours submitted to this court for 2011 are computed at the CPI-U
 23 rate for the month in which those hours were performed. Thus,

24 ⁹ Defendants are correct in arguing that plaintiffs may not
 25 calculate all of their hours at 2009 rates. The court, instead,
 26 calculates the cost-of-living adjustment according to the CPI-U for
 the year in which the fees were earned. See Sorenson v. Mink, 239
 F.3d 1140, 1149 (2001).

1 under the EAJA hourly rate plus the inflation adjustment,
2 plaintiffs' attorneys are entitled to \$172.85/hour for work
3 performed in 2008; \$172.24/hour for work performed in 2009;
4 \$175.66/hour for work performed in 2010; \$180.56/hour for work
5 performed in April 2011; \$181.22/hour for work performed in June
6 2011; and \$181.88/hour for work performed in August 2011. See
7 Decl. Carlos Holguin re: Updated EAJA Loadstar Calculation, ECF No.
8 713, at Ex. B.

9 Defendants argue that plaintiffs' calculation of hours for
10 attorney fees should be "reduced by at least half" because
11 plaintiffs "have not made any argument that Defendants' position
12 was not substantially justified as to foreign filers." Defs'
13 Opp'n, ECF No. 703, at 13. This argument fails. It was the
14 defendants' burden to show that their position was substantially
15 justified, see Oregon Environmental Council v. Kunzman, 817 F.2d
16 484, 498 (9th Cir. 1987); the plaintiffs were not required to make
17 such an argument in order to prove their eligibility for a fee
18 award under the EAJA. This court, therefore, finds it unnecessary
19 to reduce plaintiffs' calculation of hours.

20 Multiplying the above inflation-adjusted EAJA hourly rates by
21 the 295.55 work hours performed by plaintiffs' counsel yields a
22 total attorney fee award of \$51,187.93. See Decl. Carlos Holguin,
23 ECF No. 713, at 8.

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1 **1. Special Factor Enhancement:**

2 Plaintiffs seek an enhanced fee award, calculated at \$500 per
3 hour, based on their particular "distinctive knowledge and
4 specialized skill." Pls' Mot., ECF No. 681, at 11-12.

5 Enhanced hourly rates based on the special factor of the
6 limited availability of qualified attorneys for the proceedings
7 involved may be awarded under EAJA where the attorneys possess
8 "distinctive knowledge" and "specialized skill" that was "needful
9 to the litigation in question" and "not available elsewhere at the
10 statutory rate." See Nadarajah v. Holder, 569 F.3d 906, 912 (9th
11 Cir. 2009); Thangaraja v. Gonzales, 428 F.3d 870, 876 (9th Cir.
12 2005); Love v. Reilly, 924 F.2d 1492, 1498 (9th Cir. 1991); see
13 also Pierce v. Underwood, 487 U.S. 552, 572, 108 S.Ct. 2541, 101
14 L.Ed.2d 490 (1988) ("Examples . . . would be an identifiable
15 practice specialty such as patent law, or knowledge of foreign law
16 or language.").

17 Plaintiffs argue that they should be compensated at the rate
18 of \$500 per hour--the same rate that a specialized immigration
19 attorney received in Nadarajah.

20 **a. Distinctive Knowledge and Specialized Skill Needful to the**
21 **Litigation in Question:**

22 Expertise in immigration law, by itself, is not sufficient to
23 justify the award of enhanced hourly rates. Nadarajah, 569 F.3d
24 at 913 (citing Thangaraja, 428 F.3d at 876; Perales v. Casillas,
25 950 F.2d 1066, 1078-79 (5th Cir. 1992)). However, enhanced rates
26 have been awarded in immigration cases where counsel established

1 that "knowledge of foreign cultures or of particular esoteric nooks
2 and crannies of immigration law . . . [was] needed to give the
3 alien a fair shot at prevailing." Thangaraja, 428 F.3d at 876.

4 Plaintiffs submit declarations in support of their assertion
5 that they possess expertise in the particularly specialized areas
6 of immigration law that were required to give the plaintiff class
7 a fair shot at prevailing in the litigation at hand.

8 In the declaration of Judy London, Directing Attorney of
9 Public Counsel's Immigrants' Rights Project, London asserts that
10 "Messrs. Schey and Holguin are among the leading immigrants' rights
11 lawyers in the country and are recognized as the experts on the
12 rights of legalization applicants." Decl. Judy London, ECF No. 715
13 (Oct. 4, 2011), at 4. London also provides that "Messrs. Holguin
14 and Schey possess specialized knowledge of immigration law, as well
15 as even more rarified knowledge of the law affecting immigrants
16 under the 1986 legalization program." Id.

17 Similarly, in the declaration of Bernard P. Wolfsdorf, an
18 immigration law specialist and the past President of American
19 Immigration Lawyers Association, Wolfsdorf asserts that "a thorough
20 understanding of complex federal litigation, as well as knowledge
21 of a highly specialized area of substantive law--law affecting
22 legalization applicants [and] the rights of class members under the
23 settlement in this action--was required were plaintiffs to prevail
24 in their effort to enforce the CSS settlement on behalf of class
25 members whose applications CIS rejected from abroad or declared

26 ////

1 abandoned." Decl. Bernard P. Wolfsdorf, ECF No. 714 (Oct. 4,
2 2011), at 3-4. Wolfsdorf also provides:

3 [S]uccessfully enforcing the settlement in
4 Catholic Social Services on behalf of class
5 members whose legalization applications CIS
6 declared abandoned or rejected because they
7 were tendered from abroad required esoteric
8 knowledge of [a] largely forgotten area of
9 immigration law: the legalization program
10 enacted as part of the 1986 Immigration Reform
11 and Control Act (IRCA). The IRCA established
12 a one-time program that, with few exceptions,
13 ended over 23 years ago. The IRCA
14 legalization program comprised provisions
15 nowhere else existing in immigration law.
16 Messrs. Schey and Holguin are among a very
17 small number of lawyers who continue to
18 represent legalization applicants; by far the
19 vast majority of my colleagues in the
20 immigration bar have not represented
21 legalization applicants in many, many years,
22 if they have ever represented any such clients
23 at all. Recognizing that the practices
24 plaintiffs' challenged in their motion to
25 enforce the settlement--that those practices
26 were different from those the INS pursued
during the 1987-88 legalization application
year and violated the CSS settlement--required
recondite knowledge of an obscure area of the
law few, if any, other lawyers anywhere in the
country now have.

18 Id. at 4.

19 The government contends that "enforcement of the Settlement
20 Agreement did not involve constitutional law or the rights of
21 detained aliens"; "Plaintiff's Motion to Enforce involved a simple
22 interpretation of the Settlement Agreement, and the Court
23 essentially adopted Defendants' proposal for the resolution of the
24 dispute"; and "Counsel's monitoring of the Special Master
25 proceedings under the Settlement Agreement involve[d] little more
26 than opening and reading their mail." Defs' Opp'n, ECF No. 703,

1 at 8-9. Defendants make no argument that counsel for Plaintiffs
2 lack expertise on the law affecting legalization applicants, but
3 instead, argue that Plaintiffs gained their knowledge of the
4 legalization program through this very litigation, making
5 enhancement of fees unwarranted. Id. at 8 (relying upon Natural
6 Resources Defense Council, Inc. v. Winter, 543 F.3d 1152, 1159 (9th
7 Cir. 2008)). Defendants' arguments fail.

8 Defendants' application of the reasoning in Natural Resources
9 Defense Council to the circumstances of this case is inapposite.
10 In Natural Resources Defense Council, the Ninth Circuit found that
11 junior associates who had no prior experience in environmental
12 litigation and no publications or outside research on environmental
13 topics, but who were claiming a distinctive knowledge of
14 environmental law based upon their work over the course of three
15 years in litigating "a concurrent companion case before the same
16 court, involving similar factual and legal issues, on behalf of
17 nearly identical clients, and against the same agency, including
18 some of the same opposing counsel" were not entitled to enhanced
19 fees under EAJA because "all attorneys" are expected "to be experts
20 of their own cases and their clients' litigation goals." 543 F.3d
21 1152, 1159.

22 In contrast, Peter Schey has, among other qualifications,
23 founded and served as Executive Director of what is currently the
24 National Immigration Law Center; founded and served as Executive
25 Director of the Center for Human Rights and Constitutional Law,
26 Inc.; served as an adjunct professor at University of Southern

1 California Law Center and as a lecturer at University of California
2 at Los Angeles School of Law, where he taught courses on
3 immigration law; served as lead or co-lead counsel in a number of
4 class action lawsuits on behalf of immigrants, one of which
5 specifically involved provisions of IRCA's legalization program,
6 see Immigrant Assistance Project of the Los Angeles County
7 Federation of Labor (AFL-CIO) v. INS, 306 F.3d 842 (9th Cir. 2002);
8 and was appointed by President Jimmy Carter as a legal consultant
9 for a Commission on Immigration and Refugee Policy. See Decl. Peter
10 Schey, ECF No. 681, Attach. 4, at 4-13. Schey graduated from law
11 school in 1973. Id. at 3.

12 According to the resume and declaration of Carlos Holguin, Mr.
13 Holguin has worked on legal issues involving immigration since
14 1977, is the author of numerous articles and publications
15 concerning the legal rights of immigrants and refugees, and has
16 argued cases before the en banc Ninth Circuit Court of Appeals and
17 the United States Supreme Court. See Decl. Carlos Holguin, ECF No.
18 681, Attach. 3, at 2, 4-6 (Jan. 13, 2010). Holguin graduated from
19 law school in 1979. Id. at 4.

20 According to his firm website, Robert H. Gibbs graduated in
21 law school in 1974, has specialized in immigration law since 1977,
22 and is a founder of the Northwest Immigrant Rights Project. See
23 GIBBS HOUSTON PAUW, <http://www.ghp-law.net/gibbs.html> (last visited
24 Nov. 8, 2011).

25 Counsels' depth of expertise in immigration law, and
26 specifically the legal issues related to legalization applicants,

1 is thus highly distinguishable from the junior associates, with no
2 prior or outside environmental law experience, who sought enhanced
3 fees in Natural Resources Defense Council.

4 Even if, as Defendants argue, Plaintiffs' counsel gained their
5 knowledge relating to legalization applicants primarily through the
6 course of this litigation, the 25-year duration of this class
7 action and its numerous iterations at all levels of the federal
8 judicial system only strengthen Counsels' argument that they
9 possess expertise in this particular esoteric area of immigration
10 law and that they are currently of the few attorneys in the country
11 qualified to adequately enforce the post-settlement proceedings in
12 this case.

13 The court is satisfied that Plaintiffs have sufficiently
14 established that their counsel has particular legal expertise on
15 the issues presented by IRCA's largely-defunct legalization
16 program. Such knowledge goes beyond basic immigration expertise
17 and, instead, provides a prime example of an "esoteric nook[] and
18 crann[y] of immigration law." Counsels' nuanced understanding of
19 the practical effects and implications of the INS's interpretation
20 of the IRCA legalization provision and the agency's application of
21 the 1991 abandonment regulation to class members, in addition to
22 Counsels' understanding of the difficulties and roadblocks faced
23 by legalization applicants, was necessary to give the Plaintiff
24 class "a fair shot at prevailing" in both the underlying litigation
25 at issue, as well as Plaintiffs' post-settlement proceedings.

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1 Accordingly, the court determines that counsel for Plaintiffs
2 possess "distinctive knowledge" and "specialized skill" that was
3 "needful to the litigation in question."

4 **b. Not Available Elsewhere at the Statutory Rate:**

5 Plaintiffs assert that qualified counsel was not available for
6 this litigation at the statutory maximum rate.

7 In support of Plaintiffs' assertion, Bernard P. Wolfsdorf
8 attests:

9 Developing expertise in the law affecting
10 plaintiff class members would be
11 prohibitively time-consuming and, retaining
12 qualified counsel at the inflation-adjusted
13 EAJA rate all but impossible. When
14 immigration practitioners [] do undertake
15 federal litigation, they typically charge
three to four times the inflation-adjusted
EAJA statutory rate. I do not believe any
qualified lawyer could have been found to
litigation this case for less than perhaps
\$500 per hour.

16 Decl. Bernard P. Wolfsdorf, ECF No. 714, at 5.

17 Similarly, in Judy London's declaration, London provides that
18 "[e]ven were lawyers qualified to vindicate class members' rights
19 under the CSS to be found, I firmly believe none would have
20 prosecuted an enforcement motion on behalf of the CSS plaintiff
21 class at the inflation-adjusted EAJA rate." Decl. Judy London, ECF
22 No. 715, at 3.

23 In response, Defendants quote Ramon-Sepulveda v. INS, 863 F.2d
24 1458 (9th Cir. 1988) for its provision that "there is no shortage
25 of attorneys in Los Angeles qualified to assist aliens in
26 deportation proceedings." 863 F.2d at 1463. This argument fails.

1 Because specialized immigration expertise was necessary to
2 give plaintiff class a fair shot at prevailing in their motion to
3 enforce the settlement agreement, and because the court credits the
4 declarations of Judy London and Bernard P. Wolfsdorf, the court
5 finds that qualified counsel was not available for this litigation
6 at the maximum rate provided under EAJA.

7 **c. Prevailing Market Rates:**

8 In addition to establishing their entitlement to enhanced
9 rates under EAJA, Plaintiffs must also show that the requested
10 enhanced rates are "in line with those [rates] prevailing in the
11 community for similar services by lawyers of reasonably comparable
12 skill, experience, and reputation." Nadarajah, 569 F.3d at 916
13 (citing Blum v. Stenson, 465 U.S. 886, 895 & n.11, 104 S.Ct. 1541,
14 79 L.Ed.2d 891 (1984)).

15 Counsel has provided the declaration of Carol Sobel, a private
16 civil rights attorney based in Southern California, who graduated
17 from law school in 1978 and asserts that her "billing rate for 2011
18 is \$750 an hour." Decl. Carol Sobel, ECF No. 707, Attach. 1, at
19 5. Sobel also declares that, in a "survey of market rates on the
20 billing rates of attorneys who do other types of complex
21 litigation," she found that "Brad Seligman of the Impact Fund . .
22 . averred that his rate in 2008 was \$695 an hour." Id. at 11.

23 In a declaration submitted by Angelo A. Paparelli, a partner
24 in the Business Immigration Practice Group of Seyfarth Shaw LLP,
25 and a founder and past president of the Alliance of Business
26 Immigration Lawyers, Paparelli declared, "I am aware that Mr. Schey

1 has a small complex litigation private practice in addition to his
2 work at the Center for Human Rights and Constitutional Law (CHRCL),
3 and routinely charges approximately \$750 per hour." Decl. Angelo
4 A. Paparelli, ECF No. 716 (Oct. 5, 2011), at 4.

5 Given the prevailing market rates for specialized and highly
6 experienced private civil rights and immigration attorneys
7 specializing in complex litigation, the court determines that the
8 \$500 per hour fee sought by Plaintiffs is "in line with those
9 [rates] prevailing in the community for similar services by lawyers
10 of reasonably comparable skill, experience, and reputation."

11 This court therefore determines that the plaintiffs have
12 established that an enhanced fee award under the EAJA of \$500 per
13 hour is warranted in this particular case. Plaintiffs are
14 therefore awarded attorney's fees against Defendants in the amount
15 of \$143,625.

16 **2. Costs**

17 The EAJA provides that the prevailing party can recover
18 litigation expenses and costs in addition to attorneys' fees. 28
19 U.S.C. § 2412(a)(1); § 2412(d)(1)(A). "Expenses" includes those
20 that are normally billed a client, such as telephone calls,
21 postage, and attorney travel expenses. *International Woodworkers,*
22 *Local 3-98 v. Donovan*, 792 F.2d 762, 767 (9th Cir. 1986).
23 Plaintiffs seek the award of costs for "fees and other expenses"
24 under the EAJA, in accordance with plaintiffs' bill of costs. Pls'
25 Mot., ECF No. 681, at 12-13. Because plaintiffs have established
26 their eligibility for an award of fees and costs under the EAJA,


1 and defendants do not contest the award of such costs, this court
2 finds that the plaintiffs are entitled to their sought costs, in
3 the amount of \$2,033.27, under the EAJA.

4 **IV. CONCLUSION**

5 For the foregoing reasons, the court ORDERED that plaintiff's
6 motion for attorneys' fees and costs is GRANTED, with \$143,625
7 awarded for attorneys' fees, and \$2,033.27 awarded for attorneys'
8 costs.

9 IT IS SO ORDERED.

10 DATED: November 14, 2011.

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14 LAWRENCE K. KARLTON
15 SENIOR JUDGE
16 UNITED STATES DISTRICT COURT
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